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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VUZIX CORPORATION,

Plaintiff,

– against –

RICARDO ANTONIO PEARSON a/k/a
RICHARD PEARSON,

Defendant.

Civil Action No. 19-_____

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that Richard J. Pearson hereby gives notice of removal of the above-captioned matter from the Supreme Court of the State of New York, County of New York, to the United States District Court for the Southern District of New York. Pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, the Court may and should take jurisdiction over this action for all purposes for the following reasons:

FACTUAL BACKGROUND

Plaintiff Vuzix Corporation (“Vuzix”) filed this action on April 5, 2018 against Ricardo Antonio Pearson a/k/a Richard Pearson. The Complaint alleges that Ricardo Antonio Pearson used the alias Richard Pearson and made false and defamatory statements about Vuzix on the website *Moxreports.com* and on the financial website *Seeking Alpha*. See Summons and Verified Complaint, attached as Exhibit A, Dkt. No. 1.

The substance of these allegations are wholly without merit, which will be shown in future filings. In particular, as relevant to this Notice of Removal, the basic components of Plaintiff's Complaint—including identification of the Defendant as Ricardo Antonio Pearson and the identification of the author of the statements as a resident of the state of New York—are incorrect.

To correct the record, Richard J. Pearson ("Richard Pearson" or "Richard") submits a declaration addressing these issues, which is attached as Exhibit B (the "Richard Pearson Declaration"). As set forth in more detail in the Richard Pearson Declaration:

- Richard Pearson's name is Richard Pearson—as noted on his website *Moxreports.com* and in his byline on *Seeking Alpha*. This is not an alias, and his name is not—and never has been—Ricardo Antonio Pearson. Richard Pearson does not know anyone named Ricardo Antonio Pearson.¹ Richard Pearson Declaration, ¶¶ 11-12.
- Richard Pearson is a private investor based in Los Angeles, California. He began publishing reports on his website *Moxreports.com* in 2012. Mr. Pearson is a resident of the state of California and files California state tax returns accordingly. Richard graduated from the University of Southern California, in Los Angeles, in 1997. From 1997 to 2005, he was an investment banker for Deutsche Bank, stationed at times in Hong Kong, London, and New York. Mr. Pearson left Deutsche Bank in 2005 and moved back to Los Angeles. Richard Pearson Declaration, ¶¶ 1-2.

¹ Until 2017, Richard Pearson had a very private Facebook page shared only with a small number of friends and family that made reference to various informal nicknames used only among close friends and family, including "Ricardo," "Rico Suave," and "Uncle Rico." These were comical nicknames made in obvious reference to pop culture figures. None of these nicknames was ever used by Richard Pearson in any professional or legal context. The privacy settings on this Facebook account were set at their maximum levels, such that it should have only been viewable by people who were direct friends with his close friends and family. Mr. Pearson has preserved that page as evidence, but in 2017 deleted references and links to friends and family members. Richard Pearson Declaration, ¶¶ 12, 22.

- Mr. Pearson does not currently reside in New York and has not resided in New York since 2005. He does not live at the Dobbs Ferry address listed in the Complaint, he has never lived at this address, and he does not know anyone who lives at this address. He also does not and has never lived at the other addresses the Plaintiff identified in its state court filings, and he does not know anyone who lives at those addresses. Richard Pearson Declaration, ¶¶ 1, 6.
- Richard Pearson publishes his personal investment analyses evaluating publicly traded companies in the United States and China. He has been recognized by name in numerous publications including *Barron's*, *Reuters*, and *Bloomberg*. He publishes his analyses on his own website, Moxreports.com. In the past, he has also published content—including the content at issue in this litigation—on the financial website *Seeking Alpha*. Richard Pearson Declaration, ¶¶ 7, 9.
- Through his publications, Richard Pearson has on numerous occasions expressed concerns over fraud occurring in publicly traded companies in the United States and China. In fact, much of his recognition in mainstream financial media has specifically praised his successful efforts in exposing and warning about fraudulent stock promotions. Subsequent to publication of his past reports, dozens of the companies he warned about were later delisted from the major stock exchanges, and the firms, companies, or individuals described in his reports were later indicted on federal fraud charges. This includes multiple companies and individuals with close business ties to Vuzix's law firm Sichenzia Ross Ference LLP. As can be discerned from many of his reports, prior to publicly raising concerns of fraud, Richard's standard practice is to first share his analysis with federal law enforcement agencies via formal whistle-blower reports. Consistent with this practice,

prior to publicly releasing his concerns about fraud at Vuzix, Richard Pearson filed a formal whistle-blower complaint with the SEC, sharing in detail his concerns and analysis. Richard Pearson Declaration, ¶¶ 9-10, 13-15, 24-25, 28.

- At all relevant times, Mr. Pearson’s website included a biography that included an email address on which to reach him. His *Seeking Alpha* contributor profile states that he “spends his time living between Los Angeles and Beijing, China.” Richard Pearson Declaration, ¶ 3; Exhibit A, Dkt. No. 8.
- On November 30, 2018, more than six months after filing its Complaint, and four months after the deadline to complete service had expired under New York State law, Plaintiff suddenly filed an *ex parte* motion in the New York State Court seeking an extension of time to serve “Ricardo,” along with permission from the Court to serve “Ricardo” by email. At this time, Plaintiff entered into the docket the correct email addresses used by Richard Pearson, which Richard has been publicly displaying for many years. *See* Exhibit A, Dkt. Nos. 2-19. In support of the Motion, Plaintiff submitted affidavits from process servers stating that they attempted unsuccessfully to serve Mr. Pearson at various addresses in the state of New York. *Id.* Plaintiff’s motion to the New York State Court stated that “Pearson either evaded service, was not present, or did not reside at these locations.” *Id.*
- Richard Pearson is aware of no efforts to serve him personally in this matter, despite the fact that publicly available information makes clear that Richard resides in California (not New York).² In fact, Richard Pearson is aware of no lawsuits that have ever been filed against him at all. Richard Pearson Declaration, ¶¶ 16-20, 29, 31.

² In March 2017, Cemtrex, Inc. filed a defamation lawsuit against “Ricardo Antonio Pearson” in federal court in New York. The Cemtrex suit was also in response to an article that Richard Pearson had published expressing concerns over fraudulent stock promotion behind Cemtrex. That report was also published on both *Seeking Alpha* and

- For more than six months after filing the lawsuit, Plaintiff made no filings with the court, and Richard Pearson is aware of no efforts to contact or serve him during that time. On November 30, 2018, Plaintiffs suddenly filed an *ex parte* application seeking an order extending the time to serve “Ricardo” as well as allowing service to “Ricardo” by email. The New York State Court entered this order into the docket on December 4, 2018, the same day that Richard was scheduled to attend the LD Microcap conference in Los Angeles, where both Vuzix and Cemtrex were scheduled to attend and present. Over the past five years, Richard has been a regular attendee of the LD Micro conference in Los Angeles. While attending the conference, he displays his official name badge, which shows his name as Rick Pearson. Richard Pearson Declaration, ¶¶ 30-31.
- Additionally, the following sources of information available to Plaintiff or Plaintiff’s counsel show clearly that Richard Pearson’s name is Richard Pearson and that he resides in California (including when he is traveling in China and elsewhere)—not in New York, as alleged in Plaintiff’s Complaint:
 - Richard Pearson’s *Seeking Alpha* bio (which was attached to Plaintiff’s filings in the New York State Court) states his name as Richard Pearson and that he “spends his time living between Los Angeles and Beijing, China.” See Richard Pearson Declaration, ¶ 3; Exhibit A, Dkt. No. 8.
 - Richard Pearson’s registration for industry conferences attended by Vuzix (including most recently for the LD Micro Conference in Los Angeles and the

Moxreports.com. Like Vuzix, Cemtrex also uses Santa Monica-based IRTH Communications for its “investor relations” activities, and the involvement of IRTH was a key component of Richard’s fraud concerns with both companies. See *Cemtrex, Inc. v. Pearson*, Dkt. 2:17-cv-01258-JS-AKT (E.D.N.Y.). Pearson was never served with the Complaint in the Cemtrex matter, and he is aware of no attempts to serve him. See Richard Pearson Declaration, ¶¶ 16-20.

Consumer Electronics Show, or CES, in Las Vegas) stated his real name and that he was from California. *See Richard Pearson Declaration, ¶¶ 30, 32.*

- Since 2014 and throughout 2018, individuals close to Plaintiff, Sichenzia Ross Ference and IRTH Communications (Plaintiff's investor relations firm) and their clients, have demonstrated repeatedly that they are able to locate Richard's personal contact details and then successfully contact him on his personal cell phone and by email, regardless of whether he is in Los Angeles or traveling abroad. *See Richard Pearson Declaration, ¶¶ 10, 18, 23, 26-27.³*

On Thursday, January 3, 2018, just three days before the kickoff for CES, Plaintiff served Richard Pearson by email with the Complaint against "Ricardo," as permitted by the New York Court in its December 4, 2018 order. *See Richard Pearson Declaration, ¶ 32; Exhibit A, Dkt. No. 21.*

GROUNDS FOR REMOVAL

This is a civil action over which this Court has original jurisdiction under 28 U.S.C. § 1332(a) (diversity jurisdiction), and it is, therefore, properly removed to this Court pursuant to 28 U.S.C. § 1441(b). This action is properly removable to this Court by defendant pursuant to 28 U.S.C. §§ 1332 and 1441(b) because it is a civil action between citizens of different states with an amount in controversy exceeding \$75,000, exclusive of interest and costs.

³ Indeed, despite the fact that Richard Pearson has changed phone numbers and phone carriers multiple times from 2014-2018, Richard Pearson and members of his family have been repeatedly contacted by clients of IRTH and Sichenzia by phone and by email, as well as in person, in what he understood to be an attempt to intimidate or harass him to dissuade him from future publication. Pearson Declaration, ¶¶ 18, 26-27.

I. COMPLETE DIVERSITY OF CITIZENSHIP EXISTS BETWEEN PLAINTIFF AND DEFENDANT.

Plaintiff's Verified Complaint states that it is a Delaware corporation having a principal place of business in New York. Compl. ¶ 3. Plaintiff is therefore a citizen of Delaware and New York. *See* 28 U.S.C. § 1332(a).

Despite Plaintiff's allegation made "upon information and belief" that Ricardo Antonio Pearson resides in New York (*see* Compl. ¶ 4), Richard Pearson—the author of the articles at issue in Plaintiff's Complaint—resides in Los Angeles, California. He began publishing reports on his website Moxreports.com in 2012. He is a resident of the state of California and files California tax returns accordingly. *See* Richard Pearson Declaration, ¶¶ 2-4. He also maintains (and has at all times relevant to Plaintiff's Complaint, maintained) a mailing address in Marina Del Rey, California, a small neighborhood in Los Angeles. Richard Pearson Declaration, ¶ 2-4.⁴ Accordingly, Richard Pearson is a citizen of California.

Therefore, complete diversity of citizenship exists between Plaintiff and Defendant.

II. THE AMOUNT-IN-CONTROVERSY REQUIREMENT IS SATISFIED.

In the Verified Complaint, Plaintiff alleges causes of action for libel and libel per se and seeks \$80 million plus punitive damages, exclusive of costs, fees, and disbursements—well in excess of the \$75,000 amount in controversy required for this court to exercise jurisdiction. Compl. ¶¶ 56-65 and Prayer for Relief.

Because there is complete diversity between the parties and the amount in controversy exceeds \$75,000, removal on the basis of diversity is proper pursuant to 28 U.S.C. § 1441(b).

Accordingly, this case is properly removed pursuant to 28 U.S.C. §§ 1332(a) and 1441(b).

⁴ When Pearson has traveled out of the country for extended periods of time, he has done so with the intent of returning home to California. Pearson Declaration, ¶ 4.

III. THE OTHER PREREQUISITES FOR REMOVAL ARE SATISFIED.

A. **Timeliness.** Pursuant to 28 U.S.C. § 1446(b)(1), notice of removal shall be filed within 30 days after receipt of the complaint. In this case, Plaintiff served the summons and verified complaint on Richard Pearson via email on January 3, 2019. *See Exhibit A, Dkt. No. 21.* This notice of removal is filed within the 30 days specified under 28 U.S.C. § 1446(b).

B. **State Court Pleadings.** Attached hereto as Exhibit A, collectively, are true and correct copies of all of the process, pleadings, and orders in the state court action.

C. **Notice to State Court and Plaintiff of Removal.** A copy of this Notice of Removal is being filed with the Supreme Court of the State of New York, County of New York, and written notice is being provided to the plaintiff pursuant to 28 U.S.C. § 1446(d).

D. **Non-Waiver and Reservation of Rights.** In filing this Notice of Removal, defendant reserves all of his defenses and does not waive any defenses that may be available to him, including, without limitation, the defense of lack of personal jurisdiction.

WHEREFORE, Defendant RICHARD J. PEARSON requests that the Supreme Court of the State of New York, County of New York proceed no further with the matter designated by the Verified Complaint attached hereto, and that this action be removed to this Court.

Dated: January 23, 2019
New York, NY

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